

**ASSEMBLY BILL**

**No. 1298**

**Introduced by Assembly Member Daucher**

February 21, 2003

---

An act to amend Section 1788 of, and to add Section 1788.5 to, the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1298, as introduced, Daucher. Continuing care contracts: retirement communities: elderly.

Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts for retirement communities that provide for the long-term residential, social, and health care needs of elderly residents. Existing law requires every continuing care contract to contain specified information, including a list of the services that will be made available to the resident as required to provide the appropriate level of care. Existing law requires this list to include regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.

This bill would require a continuing care contract to include a description of the monitoring or observation methodology used by the provider for occupants of residential living units and related information. This bill would provide, that, notwithstanding any other provision of law, a provider is deemed to have met its requirement for observing or monitoring occupants of residential living units within a continuing care retirement community if certain conditions are met. This bill would specify that no provider shall be liable for death or injury to a resident under prescribed circumstances.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1788 of the Health and Safety Code is  
2     amended to read:  
3     1788. (a) Any continuing care contracts shall contain all of  
4     the following:  
5         (1) The legal name and address of each provider.  
6         (2) The name and address of the continuing care retirement  
7         community.  
8         (3) The resident's name and the identity of the unit the resident  
9         will occupy.  
10        (4) If there is a transferor other than the resident, the transferor  
11        shall be a party to the contract and the transferor's name and  
12        address shall be specified.  
13        (5) If the provider has used the name of any charitable or  
14        religious or nonprofit organization in its title before January 1,  
15        1979, and continues to use that name, and that organization is not  
16        responsible for the financial and contractual obligations of the  
17        provider or the obligations specified in the continuing care  
18        contract, the provider shall include in every continuing care  
19        contract a conspicuous statement which clearly informs the  
20        resident that the organization is not financially responsible.  
21        (6) The date the continuing care contract is signed by the  
22        resident and, where applicable, any other transferor.  
23        (7) The duration of the continuing care contract.  
24        (8) A list of the services that will be made available to the  
25        resident as required to provide the appropriate level of care. The  
26        list of services shall include the services required as a condition for  
27        licensure as a residential care facility for the elderly, including all  
28        of the following:  
29            (A) Regular observation of the resident's health status to ensure  
30            that his or her dietary needs, social needs, and needs for special  
31            services are satisfied.  
32            (B) Safe and healthful living accommodations, including  
33            housekeeping services and utilities.  
34            (C) Maintenance of house rules for the protection of residents.



1 (D) A planned activities program, which includes social and  
2 recreational activities appropriate to the interests and capabilities  
3 of the resident.

4 (E) Three balanced, nutritious meals and snacks made  
5 available daily, including special diets prescribed by a physician  
6 as a medical necessity.

7 (F) Assisted living services.

8 (G) Assistance with taking medications.

9 (H) Central storing and distribution of medications.

10 (I) Arrangements to meet health needs, including arranging  
11 transportation.

12 *(J) A description of the monitoring or observation*  
13 *methodology used by the provider for occupants of residential*  
14 *living units pursuant to Section 1788.5, including the facility's*  
15 *policies regarding daily monitoring of residential living unit*  
16 *occupants for immobilizing injuries in the unit, sign-out and*  
17 *sign-in procedures, and the availability of emergency signaling*  
18 *devices. The contract shall also state that the provider is not liable*  
19 *for death or injury to a resident if the provider failed to detect the*  
20 *resident's accident, injury, or emergency because the resident's*  
21 *emergency signal system was not activated or the resident failed*  
22 *to comply with the sign-in and sign-out policy of the facility.*

23 (9) An itemization of the services that are included in the  
24 monthly fee and the services that are available at an extra charge.  
25 The provider shall attach a current fee schedule to the continuing  
26 care contract.

27 (10) The procedures and conditions under which residents may  
28 be voluntarily and involuntarily transferred from their designated  
29 living units. The transfer procedures, at a minimum, shall include  
30 provisions addressing all of the following circumstances under  
31 which transfer may be authorized:

32 (A) When, in the opinion of the continuing care retirement  
33 community management, a physician, appropriate specialist, or  
34 licensing official in consultation with the resident and appropriate  
35 representative, if any, any of the following conditions exists:

36 (i) The resident is nonambulatory. The definition of  
37 "nonambulatory," as provided in Section 13131, shall either be  
38 stated in full in the continuing care contract or be cited. If Section  
39 13131 is cited, a copy of the statute shall be made available to the  
40 resident, either as an attachment to the continuing care contract or

1 by specifying that it will be provided upon request. If a  
2 nonambulatory resident occupies a room that has a fire clearance  
3 for nonambulatory residence, transfer shall not be necessary.

4 (ii) The resident develops a physical or mental condition that  
5 endangers the health, safety, or well-being of the resident or  
6 another person, or causes an unreasonable and ongoing  
7 disturbance at the continuing care retirement community.

8 (iii) The resident's condition or needs require the resident's  
9 transfer to an assisted living care unit or skilled nursing facility for  
10 more efficient care or to protect the health of other residents, or  
11 because the level of care required by the resident exceeds that  
12 which may be lawfully provided in the living unit.

13 (iv) The resident's condition or needs require the resident's  
14 transfer to a nursing facility, hospital, or other facility, and the  
15 provider has no facilities available to provide that level of care.

16 (B) Transfer of a second resident when a shared  
17 accommodation arrangement is terminated.

18 (C) Transfer is requested or required, by the provider or the  
19 resident, for any other reason.

20 (11) Provisions describing any changes in the resident's  
21 monthly fee and any changes in the entrance fee refund payable to  
22 the resident that will occur if the resident transfers from any unit.

23 (12) The provider's continuing obligations if any, in the event  
24 a resident is transferred from the continuing care retirement  
25 community to another facility.

26 (13) The provider's obligations, if any, to resume care upon the  
27 resident's return after a transfer from the continuing care  
28 retirement community.

29 (14) The provider's obligations to provide services to the  
30 resident while the resident is absent from the continuing care  
31 retirement community.

32 (15) The conditions under which the resident must  
33 permanently release his or her living unit.

34 (16) If real or personal properties are transferred in lieu of cash,  
35 a statement specifying each item's value at the time of transfer, and  
36 how the value was ascertained.

37 (A) An itemized receipt which includes the information  
38 described above is acceptable if incorporated as a part of the  
39 continuing care contract.



(B) When real property is or will be transferred, the continuing care contract shall include a statement that the deed or other instrument of conveyance shall specify that the real property is conveyed pursuant to a continuing care contract and may be subject to rescission by the transferor within 90 days from the date that the resident first occupies the residential unit.

(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall describe how any refund of entrance fees is allocated.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts that require a monthly care fee or other periodic payment, the continuing care contract shall include the following:

(A) A statement that the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) A provision specifying whether payment will be made in advance or after services have been provided.

(D) A provision specifying the provider will adjust monthly care fees for the resident's support, maintenance, board, or lodging, when a resident requires medical attention while away from the continuing care retirement community.

(E) A provision specifying whether a credit or allowance will be given to a resident who is absent from the continuing care retirement community or from meals. This provision shall also state, when applicable, that the credit may be permitted at the discretion or by special permission of the provider.

(22) All continuing care contracts that include monthly care fees shall address changes in monthly care fees by including either of the following provisions:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

1 (i) Fees shall not be subject to change during the lifetime of the  
2 agreement.

3 (ii) Fees shall not be increased by more than a specified number  
4 of dollars in any one year and not more than a specified number  
5 of dollars during the lifetime of the agreement.

6 (iii) Fees shall not be increased in excess of a specified  
7 percentage over the preceding year and not more than a specified  
8 percentage during the lifetime of the agreement.

9 (B) For monthly fee continuing care contracts, except prepaid  
10 contracts, changes in monthly care fees shall be based on projected  
11 costs, prior year per capita costs, and economic indicators.

12 (23) A provision requiring that the provider give written notice  
13 to the resident at least 30 days in advance of any change in the  
14 resident's monthly care fees or in the price or scope of any  
15 component of care or other services.

16 (24) A provision indicating whether the resident's rights under  
17 the continuing care contract include any proprietary interests in the  
18 assets of the provider or in the continuing care retirement  
19 community, or both.

20 (25) If the continuing care retirement community property is  
21 encumbered by a security interest that is senior to any claims the  
22 residents may have to enforce continuing care contracts, a  
23 provision shall advise the residents that any claims they may have  
24 under the continuing care contract are subordinate to the rights of  
25 the secured lender. For equity projects, the continuing care  
26 contract shall specify the type and extent of the equity interest and  
27 whether any entity holds a security interest.

28 (26) Notice that the living units are part of a continuing care  
29 retirement community that is licensed as a residential care facility  
30 for the elderly and, as a result, any duly authorized agent of the  
31 department may, upon proper identification and upon stating the  
32 purpose of his or her visit, enter and inspect the entire premises at  
33 any time, without advance notice.

34 (27) A conspicuous statement, in at least 10-point boldface  
35 type in immediate proximity to the space reserved for the  
36 signatures of the resident and, if applicable, the transferor, that  
37 provides as follows: "You, the resident or transferor, may cancel  
38 the transaction without cause at any time within 90 days from the  
39 date you first occupy your living unit. See the attached notice of  
40 cancellation form for an explanation of this right."



1 (28) Notice that during the cancellation period, the continuing  
2 care contract may be canceled upon 30 days' written notice by the  
3 provider without cause, or that the provider waives this right.

4 (29) The terms and conditions under which the continuing care  
5 contract may be terminated after the cancellation period by either  
6 party, including any health or financial conditions.

7 (30) A statement that, after the cancellation period, a provider  
8 may unilaterally terminate the continuing care contract only if the  
9 provider has good and sufficient cause.

10 (A) Any continuing care contract containing a clause that  
11 provides for a continuing care contract to be terminated for "just  
12 cause," "good cause," or other similar provision, shall also  
13 include a provision that none of the following activities by the  
14 resident, or on behalf of the resident, constitutes "just cause,"  
15 "good cause," or otherwise activates the termination provision:

16 (i) Filing or lodging a formal complaint with the department or  
17 other appropriate authority.

18 (ii) Participation in an organization or affiliation of residents,  
19 or other similar lawful activity.

20 (B) The provision required by this paragraph shall also state  
21 that the provider shall not discriminate or retaliate in any manner  
22 against any resident of a continuing care retirement community for  
23 contacting the department, or any other state, county, or city  
24 agency, or any elected or appointed government official to file a  
25 complaint or for any other reason, or for participation in a  
26 residents' organization or association.

27 (C) Nothing in this paragraph diminishes the provider's ability  
28 to terminate the continuing care contract for good and sufficient  
29 cause.

30 (31) A statement that at least 90 days' written notice to the  
31 resident is required for a unilateral termination of the continuing  
32 care contract by the provider.

33 (32) A statement concerning the length of notice that a resident  
34 is required to give the provider to voluntarily terminate the  
35 continuing care contract after the cancellation period.

36 (33) The policy or terms for refunding any portion of the  
37 entrance fee, in the event of cancellation, termination, or death.  
38 Every continuing care contract that provides for a refund of all or  
39 a part of the entrance fee shall also do all of the following:



1 (A) Specify the amount, if any, the resident has paid or will pay  
2 for upgrades, special features, or modifications to the resident's  
3 unit.

4 (B) State that if the continuing care contract is cancelled or  
5 terminated by the provider, the provider shall do both of the  
6 following:

7 (i) Amortize the specified amount at the same rate as the  
8 resident's entrance fee.

9 (ii) Refund the unamortized balance to the resident at the same  
10 time the provider pays the resident's entrance fee refund.

11 (34) The following notice at the bottom of the signatory page:

12  
13 "NOTICE"

(date)

14  
15 This is a continuing care contract as defined by paragraph (8) of  
16 subdivision (c), or subdivision (I) of Section 1771 of the California  
17 Health and Safety Code. This continuing care contract form has  
18 been approved by the State Department of Social Services as  
19 required by subdivision (b) of Section 1787 of the California  
20 Health and Safety Code. The basis for this approval was a  
21 determination that (provider name) has submitted a contract that  
22 complies with the minimum statutory requirements applicable to  
23 continuing care contracts. The department does not approve or  
24 disapprove any of the financial or health care coverage provisions  
25 in this contract. Approval by the department is NOT a guaranty of  
26 performance or an endorsement of any continuing care contract  
27 provisions. Prospective transferors and residents are strongly  
28 encouraged to carefully consider the benefits and risks of this  
29 continuing care contract and to seek financial and legal advice  
30 before signing.

31  
32 (35) The provider may not attempt to absolve itself in the  
33 continuing care contract from liability for its negligence by any  
34 statement to that effect, and shall include the following statement  
35 in the contract: "Nothing in this continuing care contract limits  
36 either the provider's obligation to provide adequate care and  
37 supervision for the resident or any liability on the part of the  
38 provider which may result from the provider's failure to provide  
39 this care and supervision."

40 (b) A life care contract shall also provide that:



1 (1) All levels of care, including acute care and physicians' and  
2 surgeons' services will be provided to a resident.

3 (2) Care will be provided for the duration of the resident's life  
4 unless the life care contract is canceled or terminated by the  
5 provider during the cancellation period or after the cancellation  
6 period for good cause.

7 (3) A comprehensive continuum of care will be provided to the  
8 resident, including skilled nursing, in a facility under the  
9 ownership and supervision of the provider on, or adjacent to, the  
10 continuing care retirement community premises.

11 (4) Monthly care fees will not be changed based on the  
12 resident's level of care or service.

13 (5) A resident who becomes financially unable to pay his or her  
14 monthly care fees shall be subsidized provided the resident's  
15 financial need does not arise from action by the resident to divest  
16 the resident of his or her assets.

17 (c) Continuing care contracts may include provisions that do  
18 any of the following:

19 (1) Subsidize a resident who becomes financially unable to pay  
20 for his or her monthly care fees at some future date. If a continuing  
21 care contract provides for subsidizing a resident, it may also  
22 provide for any of the following:

23 (A) The resident shall apply for any public assistance or other  
24 aid for which he or she is eligible and that the provider may apply  
25 for assistance on behalf of the resident.

26 (B) The provider's decision shall be final and conclusive  
27 regarding any adjustments to be made or any action to be taken  
28 regarding any charitable consideration extended to any of its  
29 residents.

30 (C) The provider is entitled to payment for the actual costs of  
31 care out of any property acquired by the resident subsequent to any  
32 adjustment extended to the resident under paragraph (1), or from  
33 any other property of the resident which the resident failed to  
34 disclose.

35 (D) The provider may pay the monthly premium of the  
36 resident's health insurance coverage under Medicare to ensure that  
37 those payments will be made.

38 (E) The provider may receive an assignment from the resident  
39 of the right to apply for and to receive the benefits, for and on  
40 behalf of the resident.

1 (F) The provider is not responsible for the costs of furnishing  
2 the resident with any services, supplies, and medication, when  
3 reimbursement is reasonably available from any governmental  
4 agency, or any private insurance.

5 (G) Any refund due to the resident at the termination of the  
6 continuing care contract may be offset by any prior subsidy to the  
7 resident by the provider.

8 (2) Limit responsibility for costs associated with the treatment  
9 or medication of an ailment or illness existing prior to the date of  
10 admission. In these cases, the medical or surgical exceptions, as  
11 disclosed by the medical entrance examination, shall be listed in  
12 the continuing care contract or in a medical report attached to and  
13 made a part of the continuing care contract.

14 (3) Identify legal remedies which may be available to the  
15 provider if the resident makes any material misrepresentation or  
16 omission pertaining to the resident's assets or health.

17 (4) Restrict transfer or assignments of the resident's rights and  
18 privileges under a continuing care contract due to the personal  
19 nature of the continuing care contract.

20 (5) Protect the provider's ability to waive a resident's breach of  
21 the terms or provisions of the continuing care contract in specific  
22 instances without relinquishing its right to insist upon full  
23 compliance by the resident with all terms or provisions in the  
24 contract.

25 (6) Provide that the resident shall reimburse the provider for  
26 any uninsured loss or damage to the resident's unit, beyond normal  
27 wear and tear, resulting from the resident's carelessness or  
28 negligence.

29 (7) Provide that the resident agrees to observe the off-limit  
30 areas of the continuing care retirement community designated by  
31 the provider for safety reasons. The provider may not include any  
32 provision in a continuing care contract that absolves the provider  
33 from liability for its negligence.

34 (8) Provide for the subrogation to the provider of the resident's  
35 rights in the case of injury to a resident caused by the acts or  
36 omissions of a third party, or for the assignment of the resident's  
37 recovery or benefits in this case to the provider, to the extent of the  
38 value of the goods and services furnished by the provider to or on  
39 behalf of the resident as a result of the injury.



1 (9) Provide for a lien on any judgment, settlement, or recovery  
2 for any additional expense incurred by the provider in caring for  
3 the resident as a result of injury.

4 (10) Require the resident's cooperation and assistance in the  
5 diligent prosecution of any claim or action against any third party.

6 (11) Provide for the appointment of a conservator or guardian  
7 by a court with jurisdiction in the event a resident becomes unable  
8 to handle his or her personal or financial affairs.

9 (12) Allow a provider, whose property is tax exempt, to charge  
10 the resident on a pro rata basis property taxes, or in-lieu taxes, that  
11 the provider is required to pay.

12 (13) Make any other provision approved by the department.

13 (d) A copy of the resident's rights as described in Section  
14 1771.7 shall be attached to every continuing care contract.

15 (e) A copy of the current audited financial statement of the  
16 provider shall be attached to every continuing care contract. For  
17 a provider whose current audited financial statement does not  
18 accurately reflect the financial ability of the provider to fulfill the  
19 continuing care contract obligations, the financial statement  
20 attached to the continuing care contract shall include all of the  
21 following:

22 (1) A disclosure that the reserve requirement has not yet been  
23 determined or met, and that entrance fees will not be held in  
24 escrow.

25 (2) A disclosure that the ability to provide the services  
26 promised in the continuing care contract will depend on successful  
27 compliance with the approved financial plan.

28 (3) A copy of the approved financial plan for meeting the  
29 reserve requirements.

30 (4) Any other supplemental statements or attachments  
31 necessary to accurately represent the provider's financial ability to  
32 fulfill its continuing care contract obligations.

33 (f) A schedule of the average monthly care fees charged to  
34 residents for each type of residential living unit for each of the five  
35 years preceding execution of the continuing care contract shall be  
36 attached to every continuing care contract. The provider shall  
37 update this schedule annually at the end of each fiscal year. If the  
38 continuing care retirement community has not been in existence  
39 for five years, the information shall be provided for each of the

1 years the continuing care retirement community has been in  
2 existence.

3 (g) If any continuing care contract provides for a health  
4 insurance policy for the benefit of the resident, the provider shall  
5 attach to the continuing care contract a binder complying with  
6 Sections 382 and 382.5 of the Insurance Code.

7 (h) The provider shall attach to every continuing care contract  
8 a completed form in duplicate, captioned “Notice of  
9 Cancellation.” The notice shall be easily detachable, and shall  
10 contain, in at least 10-point boldface type, the following statement:

11  
12 “NOTICE OF CANCELLATION” (date)

13  
14 Your first date of occupancy under this contract is: \_\_\_\_\_  
15

16 “You may cancel this transaction, without any penalty within 90  
17 calendar days from the above date.

18 If you cancel, any property transferred, any payments made by  
19 you under the contract, and any negotiable instrument executed by  
20 you will be returned within 14 calendar days after making  
21 possession of the living unit available to the provider. Any security  
22 interest arising out of the transaction will be canceled.

23 If you cancel, you are obligated to pay a reasonable processing  
24 fee to cover costs and to pay for the reasonable value of the services  
25 received by you from the provider up to the date you canceled or  
26 made available to the provider the possession of any living unit  
27 delivered to you under this contract, whichever is later.

28 If you cancel, you must return possession of any living unit  
29 delivered to you under this contract to the provider in substantially  
30 the same condition as when you took possession.

31 Possession of the living unit must be made available to the  
32 provider within 20 calendar days of your notice of cancellation. If  
33 you fail to make the possession of any living unit available to the  
34 provider, then you remain liable for performance of all obligations  
35 under the contract.

36 To cancel this transaction, mail or deliver a signed and dated  
37 copy of this cancellation notice, or any other written notice, or send  
38 a telegram  
39

1 to \_\_\_\_\_  
2 (Name of provider)  
3 at \_\_\_\_\_  
4 (Address of provider's place of business)  
5 not later than midnight of \_\_\_\_\_ (date).  
6  
7 I hereby cancel this  
8 transaction \_\_\_\_\_  
9 (Resident or  
10 Transferor's signature)''  
11

12 SEC. 2. Section 1788.5 is added to the Health and Safety  
13 Code, to read:

14 1788.5. (a) Notwithstanding any other provision of law, a  
15 provider shall be deemed to have met the requirement for  
16 observing or monitoring occupants of residential living units  
17 within a continuing care retirement community by implementing  
18 any procedure described by the provider in a plan of operation that  
19 is approved by the department or by complying with each of the  
20 following requirements:

21 (1) The provider shall maintain a general awareness of the  
22 residents' mental and physical health status. A general awareness  
23 of the residents' mental and physical health status shall be  
24 maintained through routine interactions with staff who are not  
25 trained caregivers, such as dining or housekeeping staff. However,  
26 no specific schedule, form, or record of these interactions is  
27 required.

28 (2) If a significant change in the physical or mental condition  
29 of a resident is observed, a staff member trained to conduct  
30 resident assessments shall be informed and shall assess the resident  
31 and create a written record of the assessment.

32 (3) Providers shall establish a system for determining on a daily  
33 basis, for each occupant of a residential living unit, whether he or  
34 she has suffered an immobilizing injury in the unit. This  
35 requirement may be met by monitoring use of the entrance to the  
36 resident's unit, detecting motion inside the unit, determining the  
37 resident's presence or absence from meals, or any other method  
38 approved by the department.

1 (4) Providers shall maintain a system whereby residents are  
2 asked to sign out or sign in whenever they leave the facility  
3 overnight, and upon their return.

4 (5) Providers shall offer residents the use of a signal system  
5 operable from within each residential living unit for use in  
6 emergencies.

7 (b) No provider shall be liable for death or injury to a resident  
8 if the provider failed to detect a resident's accident, injury, or  
9 emergency because the resident's emergency signal system was  
10 not activated or the resident failed to comply with the sign-in or  
11 sign-out policy of the facility.

